PUBLIC PROSECUTOR

v.

PENG HOCK SENG

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CRIMINAL TRIAL NO. 1 OF 1982]
29 JULY 1985

CRIMINAL LAW AND PROCEDURE: *Dangerous drugs - Possession - Heroin and morphine - Dangerous Drugs Act 1952, ss. 39B(1)(a), (b) - Amendment to s. 39B(2) - Capital punishment.*

The accused was arrested for possession of heroin and morphine and was charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under s. 39B(2) thereof. The Court then went on to hear the evidence of the prosecution and the accused.

Held:

[1] By s. 37(d) of the Act, until the contrary is proved, the accused is deemed to have been in possession of such drugs and again until the contrary is proved, the accused is also deemed to have known the nature of such drugs.

[2] The accused has not discharged the burden of presumption under s. 37(d) of the Act. His explanations are not reasonable or probable and he was found guilty and convicted.

[3] Although the offence was committed before the amendment to s. 39B(2) of the Act, the offence was committed so as to deserve capital punishment. The amount of drugs involved was very substantial and the evidence strongly infers that the accused was packing the drugs into smaller quantities and distributing them. This deadly business was and is very rampant and this resulted in the law being amended in 1983 making capital punishment mandatory. There are no extenuating circumstances under which the accused can rely on life imprisonment and he is therefore sentenced to death.

[Accused convicted and sentenced to death.]

Legislation referred to:
Dangerous Drugs Act 1952, ss. 37(d), 39B(1)(a), (2)

For the public prosecutor - Tuan Yacob bin Atan (DPP)
For the accused - G. S. Nijar; M/s. Nijar & Nijar

JUDGMENT

Mohd. Yusoff Mohamed J:

The facts of this case are fairly straight-forward. Accused, Peng Hock Seng was arrested on 18 September 1981, in a house at No. 11, Jalan Kelabu 3 for possession of both 357.378 grammes of heroin and 359.859 grammes of morphine. He was charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under s. 39B(2) thereof.

The evidence shows that the accused was a sub-tenant of an attic room in the house. He occupied the room alone. He was arrested by Insp. Chong Kew Chye and Sgt. Naidu on information received, as he was coming down the stairs leading to his room. At the request of Insp. Chong, accused opened the door to the room with his key. He had a bunch of 5 keys with him - Exhibit P23.

From the room Insp. Chong recovered the travelling bags - Exhibit P4A and B. On examining them in the accused's presence, Insp. Chong found Exhibit P4A to contain various plastic packets filled with brown substances suspected to be heroin - Exhibits P5 to P13. These were later marked as E1 to E8 by the Chemist for purpose of analysis.

When he searched the room, Insp. Chong also recovered from the floor another plastic packet wrapped in newspapers containing similar substance - Exhibit P17. Later this was marked as E9 by the Chemist. The second travelling bag - Exhibit P4B contained various sizes of empty plastic packets.

On 29 September 1981, the State Chemist, Chang Eng Thuan analysed all the various plastic packets containing the black, brown and grey substances - E1 to E9 and found them to be heroin and morphine defined as dangerous drugs under s. 2 of the Act with the total quantities as mentioned in the charge.

Earlier, on 19 September 1981, the State Chemist examined the accused's room with a police officer. He took floor-sweepings from the room - Exhibit P28 for chemical analysis. He found that these floor-sweepings contained traces of heroin, morphine and caffeine. The Chemist also took possession of some plastic packets found from the room - Exhibits P30 and P31 - some of these were cut-out. From his analysis he found most of these plastic packets had traces of heroin, morphine and caffeine.

The accused's hand-swabs and nail-clippings were also taken by the Chemist. In analysing them he found that accused's hands had traces of morphine though his nail-clippings bore no traces of them. The Chemist explained that it was possible that a handler of the drugs had no traces of it in his finger nails. This he said, depended on how the handler touched the drugs.

On this evidence accused entered his defence. He explained that he moved to the attic room one month before his arrest after he had previously occupied the middle room in the same house with one known as Hu Chia. He had seen this Hu Chia only once when he brought the person to see the landlady. He alleged that this Hu Chia had brought the two travelling bags - P4A and B, one mattress and one pillow to the middle room and left them there. The accused said he brought the two bags, mattress and pillows to the attic room when he moved there, for safe keeping until Hu Chia could find another room. He had not seen this Hu Chia since then but later corrected himself saying that, except once at night when Hu Chia told him that he had not yet found his room.

This mysterious Hu Chia cannot be found by the police who tried to trace the person for him. The landlady, Lau Yoke Tian who rented the middle room to the accused, admitted that accused had informed her that another person wanted to share the middle room with him. However, she did not see him nor seen him taking any of his belongings to the room. ASP Mohd. Ali's attempt to trace the owner of a motor-cycle bearing registration No. JAM 2545 known as Goh Kia was also not successful, but ASP Mohd. Ali was certain that this purported Goh Kia is not the same person known as Hu Chia. The defence in its attempt to establish both names referred to the same person, called the Court's Chinese Interpreter, DW2 to read two Chinese characters written by her which read in Hokkien sounded as Goh Kia but when read in Mandarin they sounded as Wu Chia.

I do not think the whole exercise by the defence to establish the existence of Hu Chia amounted to anything. The case against the accused entirely rests on question of facts. Accused was the sole occupant of the attic room in the house. He had the door-key to the room. It is established that nobody else held similar key to the room not even the landlady.

The drugs referred to in the charge were recovered from the room. By s. 37(d) of the Act, until the contrary is proved the accused is deemed to have been in possession of such drugs and again until the contrary is proved he is also deemed to have known the nature of such drugs. The defence attempts to throw the suspicion of possession to one motor-cycle owner known as Goh Kia who is also known as Wu Chia in Mandarin is in my view, not proof to the contrary so as to discharge this presumption. Neither does the defence aspersion to the landlady's evidence that some young people had visited the house under pretext to obtain the accused's NRIC after the accused was already arrested would, in my opinion, discharge this burden.

The defence explanations about the accused's hand-swabs bearing traces of the drugs and the floor-sweepings containing the same substances were attributable to the package given by Insp. Chong for accused to inspect and because some of the packets were cut open are not supported by evidence. They are mere conjectures on the part of the defence.

Nevertheless, there are no explanations by the accused to the fact that one of the packages containing heroin - Exhibit P17 was found by Insp. Chong on the floor of the room and not in the travelling-bags Exhibits P4A and B, and the fact that the State Chemist's recovery from other part of the room of some cut-out plastic packets - Exhibits P30 and P.31 which on his analysis bore traces of morphine and heroin. These are crucial evidence against the accused.

I am satisfied, upon these evidence that the accused was in possession of the drugs as per charge and that he knew the nature of them. He has not discharged the burden of presumption under s. 37(d) of the Act cast upon him. His explanations are not in my opinion reasonable or probable. He was found guilty and convicted.

Although the offence was committed before the amendment to s. 39B(2) of the Act and that in 1981 the public opinion had not hardened against trafficking of drugs as contended by the accused's Counsel and that accused was of young age and a first offender at the time the offence was committed as to deserve capital punishment. I find that the amount of drugs involved is very substantial - more than 700 grammes. The evidence strongly infers that the accused was packing the drugs into smaller quantities and distributing them. Even in 1981, this deadly business was still rampant as often reported in our mass media. This resulted in the law being amended in 1983 making capital punishment mandatory. I consider that the accused has no extenuating circumstances to deserve the lesser punishment of life sentence as the law stood in 1981. He was accordingly sentenced of death.

Also found at [1986] 1 CLJ 219